

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Numbering Policies for Modern Communications)	WC Docket No. 13-97
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
Telephone Number Requirements for IP-Enabled Services Providers)	WC Docket No. 07-243
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Connect America Fund)	WC Docket No. 10-90
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Petition of Vonage Holdings Corp. for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources)	
)	
Petition of TeleCommunications Systems, Inc. And HBF Group, Inc. for Waiver of Part 52 Of the Commission’s Rules)	

REPLY COMMENTS OF WINDSTREAM CORPORATION

Windstream Corporation, on behalf of its local exchange carrier (“LEC”) affiliates (hereinafter “Windstream”), submits the following reply comments in response to the Commission’s Notice of Proposed Rulemaking proposing to permit interconnected Voice over Internet Protocol (“VoIP”) providers to obtain direct access to telephone numbers, and the

Commission's Notice of Inquiry seeking comment on a range of issues regarding a long-term approach to numbering resources.¹

Windstream, like most other commenters in this proceeding, does not generally oppose interconnected VoIP providers gaining direct access to numbering resources. It is essential, however, for the Commission to ensure that all providers gaining direct access to numbering resources are subject to the same statutory and regulatory requirements with respect to the use and cost of administration of numbers. The Commission can most directly accomplish this result and provide much needed clarity in a variety of areas by articulating, at long last, that interconnected VoIP is a telecommunications service and its providers are telecommunications providers. This need not pave the way for increased regulation; instead, it lays the groundwork for the Commission to regulate sensibly and equitably, and grant forbearance in a non-discriminatory manner where relief from regulation is appropriate.

If the Commission declines to make this move, it should at least make clear that both LECs and interconnected VoIP providers seeking direct access to numbering resources are subject to the same certification requirements, requirements with regard to the use and cost of administering numbers, and facilities readiness requirements. In addition, the Commission should clarify that any numbering trials and/or permanent number assignments to interconnected VoIP providers do not change or disrupt existing intercarrier compensation rights and obligations, or the existing interconnection regime. Finally, the Commission should refrain from taking action on a transition to disassociate telephone numbers from geography until intercarrier compensation is no longer dependent on the jurisdiction of a call, and to evaluate the impact of geographic decoupling on 911 systems.

¹ *Numbering Policies for Modern Communications, et al.*, WC Docket No. 13-97, et al., Notice of Proposed Rulemaking, Order, and Notice of Inquiry (rel. April 18, 2013) (*NPRM*).

I. THE COMMISSION SHOULD CLASSIFY VOIP AS A TELECOMMUNICATIONS SERVICE GENERALLY AND NOT JUST IN THE DISCRETE AREA OF NUMBERING REGULATION.

The Commission in the NPRM continues its studious avoidance of the fundamental determination of whether VoIP is a telecommunications service or an information service.² Interestingly, however, in its proposed rules the Commission recommends that the terms “telecommunications carrier” and “telecommunications service” be revised to include interconnected VoIP providers and services only for the purposes of the Part 52 numbering rules.³ The Commission thus would leave unsettled the degree to which Part 51—including, among other things, carriers’ interconnection obligations—applies to VoIP providers and VoIP service. Windstream strongly opposes this piecemeal approach and recommends that the Commission finally confirm that interconnected VoIP providers are telecommunications carriers and interconnected VoIP is a telecommunications service pursuant to all of the Commission’s rules.⁴

The Commission has never declined to impose a public interest regulation on interconnected VoIP⁵ or concluded that interconnected VoIP services differ in any material way

² See, e.g., NPRM at ¶ 94, fn.240.

³ See *id.* at Appendix A, proposed 47 C.F.R. § 52.5(i) and (j).

⁴ See, e.g., Comments of COMPTTEL, WC Docket No. 13-97 et al., at 3 (July 19, 2013) (COMPTTEL Comments) (recommending that the Commission “confirm, at least with regard to facilities-based ‘managed’ VoIP providers, that these interconnected VoIP providers are telecommunications carriers”).

⁵ See *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92, ¶ 8 (2005) (*CALEA First Report and Order*) (determining that providers of interconnected VoIP services are subject to the Communications Assistance for Law Enforcement Act (CALEA)), *aff’d*, *American Council on Education v. FCC*, 451 F.3d 226 (D.C. Cir. 2006); *E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257, ¶ 24 (2005) (requiring interconnected VoIP providers to supply 911 capabilities for

from traditional voice services in the eyes of consumers. VoIP services increasingly are provided by the companies who have provided traditional telephone service and increasingly are replacing traditional voice services. Nevertheless, significant ambiguities persist with regard to VoIP interconnection rights and duties, as well as other operational issues. Must Windstream honor a negotiation request submitted by an interconnected VoIP provider and consider it pursuant to 47 U.S.C. § 252? Do interconnected VoIP providers have to honor a negotiation request submitted by Windstream? In the event the interconnected VoIP provider enters into

services that utilize the PSTN); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538, ¶¶ 38-39 (2006) (establishing universal service contribution requirements for interconnected VoIP providers); *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, ¶¶ 54-59 (2007) (extending the application of CPNI rules to interconnected VoIP providers); *IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, 22 FCC Rcd 11275, 11291-97, ¶¶ 32- 43 (2007) (extending disability access provisions to interconnected VoIP providers); *In re Telephone Number Requirements for IP-Enabled Services Providers, Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; Numbering Resource Organization*, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 95-116, 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19540, ¶ 17 (2007) (extending to interconnected VoIP providers the obligation to contribute to shared numbering administration costs); *IP-enabled Services*, WC Docket No. 04-36, Report and Order, 24 FCC Rcd 6039, 6040, ¶ 2 (2009) (extending to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under Section 214); *Universal Service Contribution Methodology; Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, Declaratory Ruling, 25 FCC Rcd 15651, 15654, 15658, ¶¶ 6, 16 (2010).

negotiations with Windstream, how would arbitrations be handled in the event the parties cannot reach agreement? Assuming an agreement is reached, would agreements be publicly available, as LEC interconnection agreements are required to be? Who would have jurisdiction over a dispute regarding the terms and conditions of the agreement? Do dialing parity obligations applicable to LECs apply to interconnected VoIP providers?

It is long overdue for the Commission to end this uncertainty and place interconnected VoIP on the same regulatory footing as traditional voice services. This need not pave the way for increased regulation; instead, it lays the groundwork for the Commission to regulate sensibly and equitably, and grant forbearance in a non-discriminatory manner where relief from regulation is appropriate.

II. THE COMMISSION SHOULD APPLY CERTIFICATION REQUIREMENT TO VOIP PROVIDERS SEEKING NUMBERING RESOURCES.

Windstream agrees with a variety of commenters that the Commission should apply the certification requirement of 47 C.F.R. § 52.15(g)(2)(i) to VoIP providers seeking access to numbering resources.⁶ As Level 3 notes, “requiring numbers holders to obtain a certificate based on a demonstration that they have the appropriate technical, managerial, and financial capacity—the typical requirements for obtaining a carrier certificate from a state—will help ensure that holders of these [finite numbering] resources are viable, technically credible, and that they will work cooperatively with others in the communications ecosystem.”⁷ Where states are unwilling or unable to offer certificates to VoIP providers, the Commission should establish a process for obtaining a certificate directly from it through a demonstration that the VoIP provider has the

⁶ See, e.g., COMPTTEL Comments at 10, 13-14; Comments of Level 3, WC Docket No. 13-97 et al., at 2-4 (July 19, 2013) (Level 3 Comments); Comments of the Michigan Public Service Commission, WC Docket No. 13-97 et al., at 3-4 (July 19, 2013).

⁷ Level 3 Comments at 2-3.

financial, managerial, and technical capabilities to provide service and can certify with numbering administrative rules.⁸

Several commenters suggest that the standards should be lessened for VoIP providers; they propose, for example, that Form 477 or Form 499 should constitute adequate documentation for the numbering administrator.⁹ Forms 477 and 499 may provide meaningful data for other purposes but do not provide the necessary certifications that are critical for protecting limited numbering resources, as well as the consumers who rely on the database, and for ensuring that the Commission retains adequate authority over providers to enforce the rules.¹⁰ For these reasons, this certification requirement continues to apply to LECs, and neither the Commission nor any commenter has articulated a persuasive justification for granting a regulatory advantage to VoIP providers in this instance.

III. VOIP PROVIDERS GAINING DIRECT ACCESS TO NUMBERS SHOULD BE SUBJECT TO THE SAME REQUIREMENTS AS EXISTING LECs.

Windstream agrees with the Commission and a variety of commenters that the same requirements and industry guidelines and practices that currently apply to carriers should be imposed on interconnected VoIP providers that obtain direct access to numbers.¹¹ As the Commission notes, requiring interconnected VoIP providers that obtain numbers directly from

⁸ See *id.* at 3; COMPTTEL Comments at 13-14.

⁹ See Comments of CenturyLink, WC Docket No. 13-97 et al., at 9 (July 19, 2013) (CenturyLink Comments); Comments of Comcast Corporation, WC Docket No. 13-97 et al., at 5 (July 19, 2013) (Comcast Comments).

¹⁰ See COMPTTEL Comments at 13-14.

¹¹ See *NPRM* at ¶ 22; Comcast Comments at 6-8; CenturyLink Comments at 6-7; Comments of NTCA—The Rural Broadband Association, WC Docket No. 13-97 et al., at 6 (July 19, 2013) (NTCA Comments).

the numbering administrators to comply with the same numbering requirements and industry guidelines as carriers will help alleviate many concerns with numbering exhaust.¹²

This would include the obligation to submit Numbering Resources and Utilization Forecast (NRUF) Form 502 to the North American Numbering Plan Administrator, and Windstream recommends that as an interim step, at least for the length of the trial period, VoIP providers receiving direct access to numbers should be required to submit NRUF reports on a quarterly basis rather than semiannually. This will help improve the Commission's tracking of number utilization and quickly identify any emerging issues.

Generally, as NTCA advocates, all VoIP providers that gain access to direct number resources should be subject to the same rules, procedures, and requirements to which LECs are subject, including call completion rules and metrics, cramming and slamming rules, Enhanced 911 requirements, and, to the extent they are not required already, contributions to the universal service fund.¹³ Such a regime would ensure that consumers are protected regardless of whether they receive voice services over copper, fiber, or broadband. As CenturyLink aptly notes, "disparate regulation impedes competitive parity. Accordingly, it should occur only when there are compelling facts and policy objectives that rationalize different treatment."¹⁴

IV. ANY NEW STANDARDS FOR 'FACILITIES READINESS' REQUIREMENT SHOULD APPLY UNIFORMLY TO ALL VOICE PROVIDERS.

Windstream generally agrees that the Commission should not change the requirement set forth in 47 C.F.R. § 52.15(g)(2)(ii) that, prior to obtaining numbers, a provider must demonstrate "facilities readiness" through an interconnection agreement approved by a state commission or,

¹² *NPRM* at ¶ 22.

¹³ *See* NTCA Comments at 6.

¹⁴ CenturyLink Comments at 7.

as allowed in the case of SBCIS, through evidence that it has ordered interconnection service pursuant to a tariff that is generally available to other providers of IP-enabled voice services.¹⁵

As COMPTTEL points out, such a demonstration is essential to ensure that consumers' calls will be interconnected with the PSTN and terminated properly.¹⁶

Several commenters, nevertheless, support relaxation of the facilities readiness requirement.¹⁷ Windstream urges that to the extent the Commission considers changes to the facilities readiness requirement, it should apply any new standards uniformly to all carriers, including LECs and interconnected VoIP providers, both facilities-based and over-the-top. Any standard that grants one class or type of providers easier or less expensive access to numbering resources creates an unjustified and market-distorting competitive disparity.

V. COSTS SHOULD BE BORNE BY CARRIERS PROPORTIONATE TO THEIR RESPECTIVE ACCESS AND USE OF TELEPHONE NUMBERS.

Windstream agrees with several commenters that if interconnected VoIP providers receive the benefits of direct access to telephone numbers, they too should bear their share of the costs of numbering.¹⁸ Such an outcome is necessary if the Commission is to meet the “competitively neutral” requirements of 47 U.S.C. § 251(e)(2). As CenturyLink notes, two near-term steps would vastly improve the alignment of cost causers and cost burden: (1) The Commission should explicitly require any interconnected VoIP provider who directly accesses

¹⁵ See *NPRM* at ¶ 29.

¹⁶ See COMPTTEL Comments at 14.

¹⁷ See, e.g., Comments of AT&T, WC Docket No. 13-97 et al., at 10 (July 19, 2013) (AT&T Comments) (proposing that VoIP providers should be able to provide a description of how it will put universal connectivity into place, coupled with post-application proof that it actually followed through); CenturyLink Comments at 10 (asserting that the Commission should adopt the NANC recommendation and allow any of the stated potential proofs of readiness to be used).

¹⁸ See, e.g., Verizon Comments at 4-7; AT&T Comments at 29; CenturyLink Comments at 21-23.

numbers to participate in the existing cost allocation process,¹⁹ and (2) The Commission should grant Verizon's Petition for Declaratory Ruling that costs characterized by NPAC as LNP Type 1 or "modifier" costs are not treated as shared costs under the cost allocation mechanism.²⁰

Moreover, in the longer term, the Commission should engage in a full reexamination of the existing cost allocation scheme. It is long overdue to assess whether the 15-year-old methodology remains appropriate in the current environment, where numbering uses increasingly lack any relationship to number portability or pooling²¹ and there is an increasing interest in using telephone numbers as addressing systems for a wide array of services and applications. The Commission should reform the cost allocation methodology to ensure that all carriers, including interconnected VoIP providers, bear costs proportionate to their respective access and use of telephone numbers.

VI. GRANTING VOIP PROVIDERS ACCESS TO NUMBERS SHOULD NOT ALTER PARTIES' RIGHTS AND OBLIGATIONS WITH RESPECT TO INTERCARRIER COMPENSATION.

Windstream agrees with several commenters that granting interconnected VoIP providers access to numbers should have no impact on existing intercarrier compensation rights obligations.²² Where an interconnected VoIP provider with directly assigned numbers uses an intermediate carrier for delivery of traffic to a terminating carrier, the intermediate carrier is responsible for any intercarrier compensation due the terminating carrier. Where an

¹⁹ This would be explicit, pursuant to 47 U.S.C. § 251(e)(2), if the Commission classifies interconnected VoIP as a telecommunications service.

²⁰ See CenturyLink Comments at 21-22. See also Petition of Verizon and Verizon Wireless for Declaratory Ruling to Assess NPAC Database Intra-Provider Transaction Costs on the Requesting Provider, WC Docket No. 11-95 (filed May 31, 2011).

²¹ See *id.* (noting that Verizon's Petition cited "the frequent use of the NPAC databases by certain service providers to accomplish a wide variety of tasks unrelated to number portability or pooling, such as grooming their own networks and offering new services")

²² See, e.g., AT&T Comments at 20-22; CenturyLink Comments at 14-15.

interconnected VoIP provider delivers traffic directly to the terminating carrier pursuant to tariff or commercial agreement, the interconnected VoIP provider itself is responsible for any intercarrier compensation due the terminating carrier.

Nevertheless, some commenters have expressed concern about whether the Commission's intercarrier compensation rules apply clearly to over-the-top VoIP providers, whether LECs will obtain the necessary information to correctly apply intercarrier compensation charges.²³ If, as Windstream recommends, the Commission states that interconnected VoIP providers, including over-the-top providers, are telecommunications carriers, this should resolve these questions and clarify the intercarrier compensation rights and obligations of such carriers. To the extent the Commission declines to classify interconnected VoIP providers as telecommunications carriers generally, Windstream urges the Commission to clarify that any numbering trials and/or permanent number assignments to interconnected VoIP providers do not change or disrupt existing intercarrier compensation rights and obligations. Such an action will prevent future disputes and arbitrage opportunities.

VII. IP INTERCONNECTION SHOULD BE DRIVEN BY MARKET FORCES RATHER THAN COMMISSION MANDATES.

Integrating interconnected VoIP providers more fully into the overarching regulatory framework governing the provision of voice service—particularly by classifying interconnected VoIP as a telecommunications service—is consistent with the Commission's goal to “facilitate the transition to an all-IP network and to promote IP-to-IP interconnection.”²⁴ If a VoIP provider seeks to interconnect with Windstream for the exchange of voice traffic, Windstream will

²³ See, e.g., COMPTTEL Comments at 15-16.

²⁴ See *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17926, ¶ 783; see also National Broadband Plan at 49 (stating in recommendation 4.10 that “[t]he FCC should clarify interconnection rights and obligations and encourage the shift to IP-to-IP interconnection”).

negotiate in good faith with that provider, and will provide IP interconnection where possible. There remain parts of Windstream's network where it is not possible at this time for Windstream to accept voice traffic in IP format, and this reality is not altered by the grant of numbering resources to VoIP providers. As Windstream has noted in previous comments, the transition to all-IP transport and switches is occurring naturally over time, and allowing market forces to drive the transition to all-IP networks continues to be the prudent course.²⁵ Windstream therefore urges the Commission not to hinder the transition, and jeopardize service in rural and high-cost areas by setting an arbitrary sunset date.

Several commenters correctly note that the marketplace is driving the transition to all-IP networks and IP interconnection.²⁶ Customers, especially business customers, are demanding features that only an IP network can provide, and TDM equipment and software is gradually being replaced with VoIP-based products. Ultimately, each provider will reach its own "tipping point"—where the preponderance of voice traffic is VoIP and TDM traffic will have to be converted to VoIP via gateways at the edge of the company's network—at which it will be most economical to convert all switches and transport facilities to IP architecture. Technology and the market will drive this outcome, and the transition should be left to occur at its own pace.

However quickly or slowly this transition occurs, it is sure to be an expensive proposition. Imposing an arbitrary deadline for a carrier to complete its transition to an all-IP world would risk substantial costs and inefficiencies, stranding plant and misdirecting resources. A transition requirement could cause such substantial economic strain that forces carriers to pull back on service, leaving customers in rural and high-cost areas without any service providers or

²⁵ See, e.g., Comments of Windstream Communications, Inc., on Sections XVII.L-R, WC Docket No. 10-90, et al., at 16-17 (February 24, 2012).

²⁶ See, e.g., Comments of Verizon and Verizon Wireless, WC Docket No. 13-97, et al., at 12 (July 19, 2013); CenturyLink Comments at 17.

with diminished service. To avoid this result, the Commission should monitor the transition to all-IP networks but not dictate its pace.

VIII. ANY TRANSITION TO NON-GEOGRAPHIC DISTRIBUTION SHOULD BE ON HOLD DURING INTERCARRIER COMPENSATION AND NG911 TRANSITIONS.

Windstream appreciates the Commission's inclusion in the Notice of Inquiry questions on the generalities and specifics of a transition to disassociate telephone numbers from geography;²⁷ this approach indicates the Commission recognizes the broad implications of such a transition. Windstream urges the Commission to continue its thoughtful consideration of this issue but to refrain from taking action until intercarrier compensation is no longer dependent on the jurisdiction of a call, and to evaluate the impact of geographic decoupling on 911 systems.

Historically, intercarrier compensation payments could differ significantly depending on the jurisdiction of the call and whether it is originating or terminating on a carrier's network. Though intrastate terminating switched access per-minute rates have been brought to parity with interstate rates as of July 2, 2013 as a result of recent Commission reforms, the Commission has not yet set a reform path for originating access per-minute charges generally and the jurisdiction of calls remains relevant for the purposes of setting originating access per-minute rates. Moreover, many of Windstream's interconnection agreements contain language requiring different types of traffic to be carried on different trunk groups, and require that the calling party number be passed on to allow this determination to be made. The decoupling of telephone numbers and geography creates added opportunity for fraud, mischief and confusion that prevents the proper billing of calls and accurate payment of access charges.

In addition, before moving forward with disassociating telephone numbers from their geography, the Commission must evaluate the impact on the provision of 911 services. As the

²⁷ See *NPRM* at ¶¶ 115-131.

Commission notes, the current VoIP E911 rules rely on the VoIP customer to manually register his or her location, which is then passed on to the PSAP during a 911 call.²⁸ It is likely that there will be significant costs and logistical difficulties related to updating systems for voice providers and local and state governments to ensure the accurate and timely provision of emergency service in a world where telephone numbers are disassociated from geography. Windstream encourages the Commission to proceed cautiously in this area to ensure public safety.

CONCLUSION

Windstream urges the Commission to ensure that all providers gaining direct access to numbering resources are subject to the same statutory and regulatory requirements with respect to the use and cost of administration of numbers.

Respectfully submitted,

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²⁸ See *id.* at ¶ 125.